APPENDIX A—NEW YORK STATE COURT OF APPEALS, ORDER

State of New York

Court of Appeals

At a session of the Court held at Court of Appeals Hall in the City of Albany on the ninth day of July 1993

Present, HON. JUDITH S. KAYE, Chief Judge, presiding

1-24 Mo. No. 632

In the Matter of Omar Z. Ghobashy, admitted as Omar Zaki Ghobashy, an Attorney and Counsel-at-Law.

Departmental Disciplinary Committee for the First Judicial Department,

Respondent,

Omar Z. Ghobashy,

Appellant.

A motion for leave to appeal to the Court of Appeals and for a stay in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion, insofar as it seeks leave to appeal from the April 27, 1993 Appellate Division order, be and the same hereby is dismissed upon the ground that that order does not finally determine the proceeding within the meaning of the Constitution; and it is

ORDERED, that the said motion for leave to appeal otherwise be and the same hereby is denied; and it is

ORDERED, that the said motion for a stay be and the same hereby is dismissed as academic.

/s/ Donald M. Sheraw
Donald M. Sheraw
Clerk of the Court

Seal

State of New York

Court of Appeals

Donald M. Sheraw
Clerk of the Court

Clerk's Office
Albany, New York 12207

DECISION July 9, 1993

1-24 Mo. No. 632

In the Matter of Omar Z. Ghobashy, admitted as Omar Zaki Ghobashy, an Attorney and Counsel-at-Law.

Departmental Disciplinary Committee
for the First Judicial Department,

Respondent,

Omar Z. Ghobashy,

Appellant.

Motion, insofar as it seeks leave to appeal from the April 27, 1993 Appellate Division order, dismissed upon the ground that that order does not finally determine the proceeding within the meaning of the Constitution; motion for leave to appeal otherwise denied.

Motion for a stay dismissed as academic.

APPENDIX B—ARTICLE: "INFORMAL DISCIPLINE IN THE FIRST DEPARTMENT 1991 UPDATE (LETTERS OF ADMONITION)" NEW YORK LAW JOURNAL, OCTOBER 19, 1992

By Hal. R. Lieberman

Informal Discipline in the First Department 1991 Update (Letters of Admonition)

Last year I wrote two articles focusing on "Informal Discipline" as a tool which disciplinary and grievance committees can use effectively to upgrade professional standards. Those articles dealt primarily with relevant procedures in the First Department and also described the substantive bases for many of the 122 letters of admonition and 44 letters of caution issued in 1990.

During 1991 the Departmental Disciplinary Committee (DDC) issued 113 letters of admonition and 22 letters of caution to First Department attorneys. Although it is not possible to discuss all of these actions, or to analyze any of them in great depth, I shall nevertheless again attempt to describe in limited detail representative admonitions and cautions issued in 1991 with an eye to shedding further light on the DDC's view of the conduct in question and its relationship to various provisions of the Lawyer's Code of Professional Responsibility. This article, the first of two, focuses on the admonitions.

As in 1990, "neglect," and the related failure zealously to pursue a client's cause, were by far the most common grounds for issuing an admonition to First Department lawyers. In fact, 68 of the 113 lawyers admonished in 1991 were sanctioned on account of violations of DR 6-101(A)(3) or DR 7-101(A)(1)(2) and (3), a sizable increase in comparison with the 51 similarly admonished for "neglect" in 1990. This is an alarming development which, if it becomes a trend, will have significant negative consequences for the bar in this jurisdiction.

❦ ❦ ❦

Confidence and Secrets
(DR 4-101)

Two lawyers were admonished for improperly revealing confidences or secrets. In one case, L. prior to withdrawing as counsel to a client, advised his adversary that his client was "difficult" that his client's counterclaim lacked merit, and showed the adversary confidential correspondence received from the client.

In a second case, L. following his discharge, wrote a letter to his adversary notifying him of the discharge but going further by disparaging his former client's credibility, motives and possible future actions.

❦ ❦ ❦

L., an immigration lawyer, was retained by a client to apply for permanent residence status under the amnesty program; in the course of the application process the client furnished to L. his passport and several other documents; thereafter, a fee dispute arose, the client discharged L., and L. asserted a retaining lien as to the documents and passport, an action which the DDC considered to be a violation of DR 9-102(C)(4) both because the lien was invalidated by a subsequent Small Claims Court action for fees in which the client prevailed (which L. disregarded for a period of time) and also because L. had no right to assert a retaining lien with respect to property such as a passport the other documents which L. held.

❦ ❦ ❦

Conclusion

As can be seen from the foregoing case summaries, in 1991 First Department lawyers violated many different rules set forth in the Code and were formally admonished for doing so. The purpose of this article is to remind lawyers that violations of the same black-letter rules of professional conduct described last year are unfortunately occurring unabated, and that these violations continue to have disciplinary consequences.

APPENDIX C—PROCEEDINGS AND ORDER OF APPELLATE DIVISION

DEPARTMENTAL DISCIPLINARY COMMITTEE OF THE SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION : FIRST JUDICIAL DEPARTMENT

In the Matter of

OMAR Z. GHOBASHY, Esq.

Respondent.

H.P. No. 70/91

Before a Hearing Panel Consisting of:

Sheldon Elsen, Chair
Beatrice S. Frank
Susan Welsher

REPORT AND RECOMMENDATIONS

Preliminary Statement

The Respondent, Omar Z. Ghobashy, was admitted to practice as an attorney and counselor-at-law by the Appellate Division of the Supreme Court, Second Judicial Department, in June, 1962. At all times relevant to the charges herein he has maintained an office for the practice of law within the First Judicial Department.

The charges are based on complaints involving five unrelated clients who retained and then discharged Respondent. The Panel held three days of hearings which were opened to the public at Respondent's request. Among those who testified were four of the complainants, two of the lawyers who had been substituted for Respondent, the Deputy Director of the New York City office of the

Immigration and Naturalization Service, the Respondent, and character witnesses for the Respondent. Their testimony and the exhibits introduced by both Staff counsel and the Respondent demonstrated a consistent pattern of inappropriate behavior by Respondent.

Respondent has regularly engaged in a pattern of professional misconduct by continuing to hold himself out as his clients' lawyer after he has been discharged by them, threatening them, failing to cooperate with their new attorneys, interfering with representation by new counsel, revealing clients' confidences or secrets learned in the course of his representation, failing to return their property to them, and, most seriously, deliberately or recklessly making false or unsubstantiated prejudicial statements about such clients to government agencies, including the Immigration and Naturalization Service and at least one foreign government, as well as to their new attorneys, their employers, their spouses, courts and others.

Respondent has shown no remorse throughout his extensive testimony, and was not candid with the panel. Most importantly, he did not acknowledge or give any indication that he understood that his conduct violated the Code of Professional Responsibility.

Respondent was formally admonished by the Departmental Disciplinary Committee in August, 1986 for demonstrating his willingness to represent someone he believed to be perpetrating a fraud on the government and again in November of 1986 for making inappropriate accusations of improper conduct by opposing counsel and using strong and accusatory language in letters to the judge in the case.

The Panel unanimously found that the evidence presented supported the charges and that the pattern of behavior which the evidence revealed reflects adversely on Respondent's fitness to practice law. Respondent is a danger to the public; he is a potential source of harm to persons who retain him and he lacks internal

controls to conform his conduct to the norms of professional behavior. The Panel found no mitigating circumstances and recommends that the Respondent be disbarred.

Since Respondent is not subject to an interim suspension, we recommend that the Court take action forthwith to stop him from practicing law.

Background

Four of the matters involved immigration proceedings and the fifth involved an estate.

1. The Gallardos

The Gallardos retained Respondent in or about August, 1987 to appeal the denial of their application for a visa for Mr. Gallardo. In November 1987, after they received an offer for a second interview from the Immigration and Naturalization Service (INS) concerning the legitimacy of their marriage, they asked Respondent to withdraw the appeal. Respondent refused, citing reasons that appear not to be sound. The consequence was that the visa application was not granted until two years later when their new counsel advised them to undergo a second interview.

We do not deem this apparently unsound advice to constitute professional misconduct, but base our findings of misconduct toward the Gallardos solely on what happened thereafter.

From November, 1987 through July, 1989, Respondent failed to respond to the Gallardos' repeated requests for information regarding the status of their case. Mrs. Gallardo testified that when she called to confirm an appointment with Respondent, Respondent's secretary told her that Respondent refused to see them and that he would call the police if they came to his office. In July, 1989 the Gallardos wrote to Respondent discharging him and requesting that all of their papers, which included original personal

financial records, be forwarded to their new attorney. Respondent did not comply and has never complied with this request.

Respondent wrote to the Gallardos, stating that their new attorney was incompetent, predicting that they would fail in their application and threatening to sue them for his fee. (Staff Ex.10). In a letter written on September 13, 1989, he advised them that their new attorney's actions in withdrawing their appeal might subject them to criminal proceedings and Mr. Gallardo to deportation. The record showed no justification for these statements, although Respondent claimed to us that the risk he wrote of was based on the possibility that the INS on remand would make a thorough investigation of the Gallardos. (Staff Ex.11). A copy of the letter is annexed hereto.

Our most serious finding with respect to the Gallardo case is that, on the same day he wrote to new counsel, Respondent also wrote to the Acting Director of the INS, accusing the Gallardos and their lawyer of evading the Marriage Fraud Act by withdrawing their appeal. (Staff Ex.12). The letter, which was either false or without a basis in fact shown by the record before us, implied that the Gallardos' marriage was fraudulent and thus that their immigration status was tainted by fraud. A copy of that letter is annexed hereto.

2. The Hassans

The Hassans retained Respondent in March, 1988 to apply for a visa for Mr. Hassan based on their marriage on January 20, 1987. On April 30, 1988, Respondent advised Mr. Hassan that his petition had been approved and sent to Lima, Peru. In September, 1989 Respondent and Mr. Hassan were advised that the petition had not been received by the American Consulate in Peru.

Mr. Hassan testified that when he went to Respondent's office to ask for an explanation, Respondent cursed him, threatened to call the police and threatened to tell the INS that the Hassans' marriage was fraudulent. There is no credible evidence in the record to support his charge of fraud.

The Hassans engaged new counsel, who wrote to Respondent on September 15, 1989, advising him of the substitution and asking for the file. The Hassans countersigned the letter. Respondent never forwarded the file to the new attorney.

Although there was no factual basis for questioning the legitimacy of the Hassans' marriage, Respondent sent a letter to Mrs. Hassan on September 27, 1989 addressing her by her maiden name. In this letter he referred to the INS and warned of criminal prosecution when family relationships are falsified to obtain visas. (Staff Ex.20). A copy of this letter is annexed hereto. When questioned by the panel as to the factual basis for his belief that the Hassans were engaged in some type of marital fraud, Respondent replied that he based it in part on Mr. Hassan's appearance at his office with a woman other than his wife. According to the testimony before us, this woman was a fellow employee of Mr. Hassan. There was no credible evidence that would afford any basis for Respondent's serious charge of fraud against these clients.

Respondent then transmitted that charge of fraud to the new attorney by sending the new lawyer a copy of Respondent's letter to Mrs. Hassan, in which he made the charge. In his letter to the new attorney, Respondent also questioned the genuineness of Mr. Hassan's signature on the letter of September 15, asked the new attorney about her connection with Mrs. Hassan and stated that the new attorney should answer promptly for her own protection. The record shows no basis for these statements. He asked the new attorney to remit the balance of his fee to insure the release of the Hassans' papers to her. (Staff Ex. 21). A copy of the letter is annexed hereto.

Respondent wrote a letter dated October 10, 1989 to Mr. Sherif Omar, Ambassador and Consul General of Egypt, which accompanied a memorandum in which Respondent asked that the Consulate deny Mr. Hassan new passport or withdraw any passport he obtained through forgery, and give him a document valid only

for travel to Egypt, since he was evading the draft. We have no evidence showing that such a charge was true. Again, with no factual basis shown by the record before us, Respondent further alleged that Mr. Hassan had "committed forgery in immigration here and he is under investigation." (Staff Ex. 25). This letter, which was written in Arabic, is annexed hereto, together with an English translation by a translator retained by Staff counsel, and a longer Arabic version, together with a translation of the latter submitted by Respondent.

3. Mamdoud ElDeeb

In December, 1989 Respondent was retained to represent Mr. ElDeeb before the INS in his application for permanent residency status based on his employment as a physiotherapist at the Bronx Lebanon Hospital Center. The retainer agreement provided for payment of $750.00 in advance, $500.00 on approval of the application, $500.00 upon the INS interview, plus filing fees. Mr. ElDeeb paid Respondent $800.00 on signing the retainer. At that time Mr. ElDeeb had already obtained permission for a temporary stay. Mr. ElDeeb testified that he then prepared his own application to extend the period of the stay and was instructed by Respondent to file this application with the INS, which Mr. ElDeeb did.

In May, 1990, Mr. ElDeeb discharged Respondent and retained a new attorney, who wrote to Respondent on May 18 advising him of the substitution, enclosing a signed authorization and asking Respondent to Forward the file. Respondent then wrote to the new attorney stating that he would forward the file when he received his fee of $1,085.00 and that he would sue and notify the hospital if payment was not received.

On May 23, 1990 Mr. ElDeeb wrote to Respondent expressing dissatisfaction with Respondent's representation and his ethics, asking for the return of his file and his money or documentation of any amount Respondent felt was owed to him. In this letter he advised Respondent that he would complain to the Departmental

Disciplinary Committee if Respondent continued to refuse to communicate with him.

Despite the notification that he had been discharged, Respondent filed a petition for labor certification on Mr. ElDeeb's behalf with the INS, on or about May 26, 1990. Respondent then wrote to the Employment Specialist at the hospital where Mr. ElDeeb was employed, advising her that Mr. ElDeeb owed him money for legal services and stating that Mr. ElDeeb might be subject to deportation for overstaying his visa and for unauthorized employment. He further stated that because Mr. ElDeeb had not followed Respondent's advice, but had followed other advice or acted on his own, Mr. ElDeeb would not be eligible to adjust his status and would have to go to Egypt. This could result in a six month delay or in his failure to qualify for permanent employment. Finally, Respondent stated to this employer of his former client that he might sue Mr. ElDeeb for libel and slander and that unless the Employment Specialist sent a letter to Respondent disassociating herself from Mr. ElDeeb's letter, the hospital would be liable, since Mr. ElDeeb had used hospital stationery in correspondence with Respondent. (Staff Ex. 65). A copy of this letter is annexed hereto.

Mr. ElDeeb complained to the Departmental Disciplinary Committee in June, 1990. In September, 1990 Respondent brought a Civil Court action against Mr. ElDeeb for legal fees plus counsel fees. Mr. ElDeeb counterclaimed for the return of part of the fee he had paid to Respondent and for counsel fees. Respondent moved for summary judgment and for sanctions against Mr. ElDeeb and his attorney on the grounds that the counterclaim and defense were frivolous.

In an affirmation in support of his motion, Respondent falsely claimed, among other things, that Mr. ElDeeb had filed a complaint with the Departmental Disciplinary Committee which Mr. ElDeeb realized to be frivolous, and that Mr. ElDeeb had failed to submit to conciliation and had abandoned his complaint. He further affirmed

that Mr. ElDeeb's new attorney fraudulently took over his immigration case to do nothing and charge him an illegal fee, and Respondent falsely claimed that the attorney had urged Mr. ElDeeb to file the complaint and had advised him not to proceed with mediation. (Staff Ex. 70). A copy of that affirmation is annexed hereto.

Mr. ElDeeb opposed the motion and asked for sanctions against Respondent for his erroneous representations to the Court. Respondent's motion for summary judgment was denied with the court reserving decision on sanctions. A Civil Court arbitrator decided the matter in Mr. ElDeeb's favor on the grounds that Respondent had no cause of action, but imposed no sanctions on either party. Respondent claims that he has demanded a trial *de novo*, but a search of the records by the Deputy Chief Clerk of the Bronx County Civil Court has found no record of such a demand. (Staff Ex. 73). A copy of the Clerk's certificate is annexed hereto. Respondent has not forwarded Mr. ElDeeb's file to his new attorney.

4. Sydney Lanier Fortner and Samir Kahwaji

In April, 1985, Mr. Kahwaji and Ms. Lanier retained Respondent to file a "relative petition" for a visa for Mr. Kahwaji, based upon their marriage. They met with Respondent and at his request gave him original documents, including birth certificates and their marriage license. On or about May 10, 1985 Respondent prepared the petition and a notice of appearance. Respondent thereafter failed to respond to their repeated inquiries regarding the status of their petition.

At the hearing before the Panel, James Scott Blackman, Deputy District Director of the INS office in New York City, testified that when he examined Mr. Kahwaji's file there was no evidence that a relative petition had ever been filed. (Tr.,p.353).

In a letter dated April 8, 1987 Mr. Kahwaji and Ms. Lanier discharged Respondent and requested the return of their original

documents and other papers. Respondent has never returned these documents to them.

In spite of the fact that he had been retained to file the relative petition, had subsequently been discharged from this representation and had never been authorized to file an application for Mr. Kahwaji under the legalization program. Respondent wrote to Mr. Kahwaji telling him that he had scheduled an appointment for Mr. Kahwaji on May 8 in connection with a legalization application. On April 20 Ms. Lanier again wrote to Respondent, notifying him that he was to stop any further action on their behalf and asking him to forward their file to their new attorney.

On April 20 Respondent wrote to Mr. Kahwaji telling him that he would be deported, that his relative petition would be denied, and that if he did not appear at Respondent's office without his wife he would be arrested and deported. Respondent also said that Mr. Kahwaji would forfeit his opportunity to apply under the legalization program. (Staff Ex. 55). A copy of that letter is annexed hereto. The record shows no basis for Respondent's statements.

Respondent continued to disregard the letters dismissing him and continued to hold himself out as Mr. Kahwaji's attorney. On June 12 he wrote a letter advising the INS that Mr. Kahwaji had failed to appear for a legalization appointment and that accordingly it would be necessary to reschedule a deportation hearing for him. (Staff Ex.57). A copy of this letter is annexed hereto.

On December 12 Respondent sent a letter to the Director of the Legalization Office of the INS. In this letter he advised the Director that another representative of Mr. Kahwaji had applied for legalization because Respondent had confronted Ms. Lanier as to the validity of the marriage. He further advised the Director that Mr. Kahwaji had a prior arrest in Maryland and that, in a petition for political asylum, Kahwaji had stated that he was a member of the Moslem Brotherhood, which Respondent described as "a subversive

and terrorist organization close to Islamic fundamentalist in Iran." (Staff Ex. 58). These statements, if true, would nevertheless be grossly violative of his clients' interests. A copy of that letter is annexed hereto.

5. Nawal Al Omari

Mrs. Al Omari retained Respondent in or about June 1988 to represent her as administratrix of her husband's estate. Respondent prepared a petition to the Surrogate's Court to have Mrs. Al Omari appointed administratrix. Letters of Administration were granted in January 1989.

In September, 1990 Mrs. Al Omari notified Respondent that she wished to discharge him. Mr. Van Leer, her new counsel, forwarded duly executed consent forms to Respondent and requested that Respondent forward all pertinent papers to him. Respondent wrote to Van Leer on October 29, claiming that he could not be removed from the case "without payment of fee by Court order of $10,000.00." He further claimed that in a dispute involving alleged heirs of her husband, the claim had been rejected and an accounting had been approved with an award of counsel fees (Staff Ex.32). A copy of this letter is annexed hereto.

Van Leer testified before the Panel that contrary to Respondent's claim in this letter, the dispute involving the alleged heirs was not resolved and that currently he was preparing to go to trial in the matter. (Tr.,p.277). In addition, a statement by the Chief Clerk of the Surrogate's Court, Westchester County, was introduced into evidence certifying that after searching the records he had found no "record or entry of a decision, order or judgment of the court awarding a legal fee to Omar Z. Ghobashy, Esq." (Staff Ex.44). A copy of that certificate is annexed hereto. After hearing this testimony and reviewing the certificate, we do not credit Respondent's version.

On October 20, Respondent served a " Notice of Attorney's Lien" on Mrs. Al Omari and her tenant demanding that all rents be paid to Respondent. The notice stated that "The Fee by Surrogate Court is $9500.,00 [sic]." (Staff Ex.31). A copy is annexed hereto.

In response to a November 18 letter from Mrs. Al Omari repeating the notice that another attorney had been substituted for him, Respondent wrote to Mrs. Al Omari on November 27, stating that he rejected her letter. He advised her that unless his fee was paid and without a court order she could not substitute another attorney for him. He went on to write that the client had 15 days to pay his fee, and that he would soon execute on the house and sell it. He further claimed that he had rejected her consent to the substitution of attorneys and falsely stated that the Court did not accept it. The letter made further false or dubious claims, among them that she may be subject to criminal investigation and that the INS would contact her. (Staff Ex. 34). A copy is annexed hereto.

In a January 19 letter to Mrs. Al Omari, Respondent again falsely stated that Van Leer was " rejected by the Court" and charged that Van Leer was being paid by the lawyers for her adversaries in the pending case involving the alleged heirs. He predicted, without any basis shown by the record, that she would end up in prison. (Staff Ex. 45). A copy of this letter is annexed hereto.

At the hearing before the Panel, Van Leer testified that in view of Respondent's refusal to be substituted, the Surrogate's Court advised him to make a motion for substitution. In his affirmation in opposition to the motion, Respondent claimed, without any basis shown by the record before us, that Van Leer intended to destroy Mrs. Al Omari's "solid case", obstruct justice and interfere in criminal proceedings and asked that sanctions be imposed on Van Leer. (Staff Ex.36). A copy of his affirmation is annexed hereto.

At the hearing on the motion, Respondent consented to the substitution and the motion to substitute Van Leer for Respondent was granted.

While this motion was pending, Respondent petitioned the Court to remove Mrs. Al Omari as administratrix on the grounds that she was no longer qualified to serve as fiduciary for the estate, and have the Public Administrator, with himself as counsel, substituted for her. Surrogate Albert J. Emanuelli denied the petition, noting that by pursuing this application while resisting the efforts of other counsel to replace him as Mrs. Al Omari's counsel, Respondent had engaged in an obvious conflict of interest which was either the result of Respondent's "ignorance or is a blatant example of frivolous conduct on his part." (Staff Ex. 39). A copy of the Surrogate's opinion is annexed hereto.

Discussion

The testimony and evidence presented at the Panel hearings demonstrated a consistent pattern of behavior by Respondent. After he had been notified that his clients had discharged him he disregarded the notice, refused to return the clients' documents to them, continued to hold himself out as their lawyer and took unauthorized action on their behalf, threatened them, and, most seriously, deliberately or recklessly made false or unsubstantiated prejudicial statements about them to the INS, a foreign government, their employers, their new attorneys, their spouses and others. In these letters and in his affirmation to the Surrogate's Court in the Al Omari case and in his affirmation to the Civil Court in the ElDeeb case, he made statements that, based on the record before us, we conclude he had no basis to believe were true.

Respondent's lengthy testimony before the Panel was rambling and often incoherent, and in some particulars we found it to be

unbelievable. He repeatedly failed to justify his serious public charges against his clients.

Evidence was also presented which demonstrated that Respondent had neglected a client matter before he was discharged. The Deputy District Director of the INS office testified that the Kahwaji file contained no evidence that a relative petition had ever been filed despite the fact that Respondent had been retained to file a relative petition and his clients had been led to believe that such a petition had been filed. There was further testimony that Respondent refused to respond to client inquiries regarding their matters, and abusively rejected his clients' requests for information about their cases.

In several instances Respondent claimed that the special rules of practice relating to immigration matters required that he act as he did with respect to his clients. The Panel found this claim to be without merit. No rules of practice would ever justify the false, reckless and prejudicial statements Respondent made about his former clients, or the baseless statements about them and their new attorneys which he affirmed to a court. Nor do any rules of practice justify his failure to cooperate with their new attorneys or to return their documents to them.

Respondent showed no awareness of the most basic norms of professional conduct. He seemed to feel free to make serious charges against clients, without awareness of the limitations on such disclosures. In his case, these nuances are swept away by our findings that such charges against his clients were not based on fact but were either invented or based on surmise without a factual foundation.

He also did not understand that an attorney's lien against a former client's papers did not entitle him to continue the client's representation.

Recommendation

The Panel found that all of the charges relating to misconduct discussed, with the exception of that part of Charge Eleven which charges physical abuse, were sustained.[1]

No persuasive evidence was offered in mitigation, and Respondent's testimony led us to the conclusion that he would repeat his conduct in the future unless restrained.

For the reasons set forth above, the Panel recommends to the Appellate Division of the Supreme Court, First Judicial Department, that Respondent be disbarred, and further recommends that the Court take steps immediately to stop him from practicing law.

DATED: New York, New York
June 8, 1992

/s/ Sheldon H. Elsen, Chair
Sheldon H. Elsen, Chair

[1] As to the charge of disclosing clients' confidences and secrets, while we were not sure that he violated clients' confidences in many cases, since he appears to have made up what he said, not received it from clients, he clearly violated clients' secrets, for he used against his clients matters which he had learned while representing them.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on January 14, 1993

Present - Hon. Francis T. Murphy, Presiding Justice
E. Leo Milonas
Ernst H. Rosenberger
Bentley Kassal
Israel Rubin, Justices

In the Matter of Omar Z. Ghobashy, admitted as Omar Zaki Ghobashy, an attorney and counselor-at-law:

Departmental Disciplinary Committee for the First Judicial Department,

Petitioner,

Omar Z. Ghobashy, Esq.,

Respondent

M-3194

The Departmental Disciplinary Committee for the First Judicial Department, by Hal R. Lieberman, its attorney (Mady J. Edelstein, of counsel), having presented a petition to this Court, on July 13, 1992, seeking an order pursuant to 22 NYCRR §603.4(d) confirming the Hearing Panel's Report and Recommendation that respondent Omar Z. Ghobashy (who, as Omar Zaki Ghobashy, was admitted to practice as an attorney and counselor-at-law in the State of New York on June 20, 1962, at a Term of the Appellate Division of the Supreme Court, Second Judicial Department), be disbarred based upon the Hearing Panel's determination that respondent was guilty of professional misconduct.

And respondent having appeared herein by Fredric Lewis, his attorney, and having interposed an answering petition, seeking: disaffirmance of the Hearing Panel's report; dismissal of the charges

or, in the alternative, a new hearing; and suspension of any further proceedings in this matter until respondent is physically capable of assisting in his own defense.

And petitioner having interposed a reply in opposition to the answer of respondent and in further support of the petition,

Now upon reading and filing the papers with respect to the petitions, and due deliberation having been had thereon, and upon the Opinion Per Curiam filed herein, and this Court having found and determined that respondent is guilty of eleven charges of professional misconduct arising from his representation of five clients, has offered no mitigation for his actions, and was not candid with the Panel, and this Court having rejected respondent's claim that the report should be disaffirmed because of non-compliance with §605.22 (c) of the Court's Rules relating to a quorum, it is, therefore, unanimously

Ordered: that the Departmental Disciplinary Committee's petition is granted, the findings of fact and conclusions of law of the Hearing Panel are confirmed, and said respondent is disbarred from practice as an attorney and counselor-at-law in the State of New York; that respondent's name be struck from the roll of attorneys and counselors-at-law in the State of New York; that said respondent be and hereby is commanded to desist and refrain from the practice of the law in any form, either as principal or agent, clerk or employee of another; that said respondent be and hereby is forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority; that said respondent be and hereby is forbidden to give to another an opinion as to the law or its application or any advice in relation thereto; and that said respondent be and hereby is directed, within 30 days of the date of this order, to fully comply with the provisions of Title 22, Section 603.13, of the Rules of this Court, a copy of which is annexed hereto and made a part hereof, all effective immediately, and it is further unanimously

Ordered: that respondent's petition to disaffirm the findings of the Hearing Panel be and the same hereby is denied.

Enter:

/stamped/ Catherine O'Hagan Wolfe
Deputy Clerk
Clerk

Supreme Court, Appellate Division

FIRST DEPARTMENT, JULY 1992

/stamped/ Jan 14, 1993

Francis T. Murphy, Presiding Justice
E. Leo Milonas
Ernst H. Rosenberger
Bentley Kassal
Israel Rubin, Justices.

In the Matter of Omar Z. Ghobashy, admitted as Omar Zaki Ghobashy, an attorney and counselor-at-law:

Departmental Disciplinary Committee for the First Judicial Department,

Petitioner,

against

Omar Z. Ghobashy, Esq.,

Respondent.

M-3194

Disciplinary proceedings instituted by the Departmental Disciplinary Committee for the First Judicial Department. Respondent was admitted to the Bar at a Term of the Appellate Division of the Supreme Court for the Second Judicial Department on June 20, 1962.

Mady J. Edelstein, of counsel (Hal R. Lieberman, attorney) for petitioner

Fredric Lewis, attorney for respondent.

Motion No. 3194 - July 13, 1992

In the Matter of Omar Z. Ghobashy, an Attorney

PER CURIAM

Respondent, Omar Z. Ghobashy, was admitted to the practice of law by the Second Judicial Department on June 20, 1962 under the name of Omar Zaki Ghobashy. At all times relevant herein respondent has maintained an office for the practice of law within the First Judicial Department.

On January 10, 1992 respondent was served with a notice and statement of charges asserting that he had violated various Disciplinary rules in the course of representing five clients (four immigration cases, one estate matter) and that respondent was guilty of unethical practices and professional misconduct.

Charge one alleged that, by making false and misleading statements to his clients and to the third parties in the course of representing five clients, respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of DR 1-102(A) (4) of the Code, as it existed prior to the 1990 Amendments.

Charge two alleged that respondent intentionally and recklessly prejudiced or damaged four immigration clients by making false and misleading statements about them to third parties in violation of DR 7-101(A) (3).

Charge three alleged that respondent knowingly revealed the confidences or secrets of the four immigration clients to their disadvantage in violation of DR 4-101(B) (1) and (2).

Charge four alleged that respondent neglected three of the immigration cases in violation of DR 6-101 (A) (3).

Charge five alleged that respondent improperly refused to withdraw after being discharged by all clients in violation of DR2-110(B) (4).

Charge six alleged that respondent failed to cooperate with succeeding counsel and attempted to interfere with new counsel for all five clients in violation of DR 2-110(A) (2).

Charge seven alleged that respondent threatened one of the new counsel and an employer of one of the clients with adverse action if they complained to the Departmental Disciplinary Committee (DDC) in violation of DR 1-102(A) (5).

Charge eight alleged that, by falsely and recklessly affirming matters to the Civil Court and the Surrogate's Court, regarding two of his clients, respondent violated DR 7-106(SC) (1)

Charge nine alleged that, by failing to return property to two clients, respondent violated DR 9-102 (B) (4).

Charge ten alleged that, by advocating a position materially adverse to a former client, respondent violated DR 5-108(A) (1), after the 1990 Amendments.

Charge eleven alleged that, by threatening his clients and their new attorneys and by physically and verbally abusing all five clients and by engaging in all of the conduct alleged in the statement of charges, respondent engaged in conduct that reflects adversely on his fitness to practice law in violation of DR 1-102(A) (6) and DR 1-102(A) (7) after the 1990 Amendments.

In his amended answer, respondent denied all eleven charges and raised several affirmative defenses.

A hearing was held on the within charges on April 20, 1991, April 27, 1992 and May 11, 1992. The Hearing Panel thereafter sustained all of the charges of misconduct except as to part of Charge eleven which charges physical abuse. The Panel issued its written report

recommending that respondent be disbarred and stating in pertinent part as follows:

> Respondent has regularly engaged in a pattern of professional misconduct by continuing to hold himself out as his clients' lawyer after he has been discharged by them, threatening them, failing to cooperate with their new attorneys, interfering with their representation by new counsel, revealing clients' confidences or secrets learned in the course of his representation, failing to return their property to them, and most seriously, deliberately or recklessly making false or unsubstantiated prejudicial statements about such clients to government agencies, including the Immigration and Naturalization Service and at least one foreign government, as well as to their new attorneys, their employers, their spouses, courts and others.
>
> Respondent has shown no remorse throughout his extensive testimony, and was not candid with the panel. Most importantly, he did not acknowledge or give any indication that he understood that his conduct violated the Code of Professional Responsibility.

By petition dated June 17, 1992, the DDC seeks an order confirming the Hearing Panel's report and imposing the recommended sanction of disbarment. In opposition, respondent seeks an order disaffirming the findings of the Hearing Panel and either dismissing the charges or directing that a new hearing be held. Counsel also requests that any further proceedings be suspended until respondent is physically capable of assisting in his own defense.

It is contended that the five complaints of professional misconduct were made during a period of time when respondent was

seriously ill. While counsel concedes that respondent's actions concerning one of the charges warranted disciplinary proceedings, he asks that the Court consider respondent's medical condition. He further states that respondent's past practice of more than 25 years demonstrates a behavior pattern which was exemplary up until the time of his illness. Finally, counsel claims that the findings should be disaffirmed because of non-compliance with §605.22(c) in that there was not a proper quorum during the hearings.

In reply, the DDC contends that the complaints against respondent are not a recent occurrence in view of the deliberately or recklessly making false or unsubstantiated prejudicial statements about such clients to government agencies, including the Immigration and Naturalization Service and at least one foreign government, as well as to their new attorneys, their employers, their spouses, courts and others.

Respondent has offered no mitigation for his actions and was not candid with the Panel. His persistent denials of wrongdoing indicate he fails to understand that his conduct violated the Code of Professional Responsibility. Respondent's misconduct spans a period of several years and pre-dates the illness he raises for the first time in response to the Committee's petition to confirm the report. Respondent's diabetic condition has existed for more than 10 years and respondent had ample opportunity to offer this evidence in mitigation during the hearings. No such evidence was presented at the hearing. Respondent offered no evidence in mitigation of the misconduct and, in 1986, was admonished by the Committee on two separate occasions.

We reject respondent's claim that the report should be disaffirmed because of non-compliance with §605.22(c) of the Court's Rules relating to a quorum. No objection was taken. Nor was the issue raised when either of the panel members left the room. The alleged irregularity in procedure does not invalidate the Hearing Panel's findings (22 NYCRR §605.1[b]).

Accordingly, the petition is granted and the Hearing Panel's report confirmed. The respondent is disbarred from the practice of law and his name stricken from the roll of attorneys in the State of New York, effective immediately. Respondent's petition to disaffirm the findings of the Hearing Panel is denied.

All concur.

Order filed.

No.

Supreme Court of the State of New York

APPELLATE DIVISION–FIRST JUDICIAL DEPARTMENT

In the Matter of Omar Z. Ghobashy,
an attorney and counselor-at-law:

DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT,

Petitioner,

OMAR Z. GHOBASHY, ESQ.,

Respondent.

HAL R. LIEBERMAN
Chief Counsel
Attorney for Petitioner
DEPARTMENTAL DISCIPLINARY COMMITTEE
41 Madison Avenue
New York, N. Y. 10010
(212) 685-1000
Of Counsel

To: Fredric Lewis, Esq.
7 Dey Street
New York, New York 10007
Attorney(s) for Respondent

Service of a copy of the within
is hereby admitted Dated

Attorney(s) for

Sir: Please take notice that the within is a (certified) true copy of an Order duly entered in the office of the clerk of the within named court on January 14, 1993

Dated, January 15, 1993

Yours, etc.,
HAL R. LIEBERMAN
Chief Counsel
DEPARTMENTAL DISCIPLINARY COMMITTEE
41 Madison Avenue
New York, N.Y. 10010

To Fredric Lewis, Esq.
Attorney(s) for Respondent

Supreme Court of the State of New York

APPELLATE DIVISION—FIRST DEPARTMENT

In the Matter of Omar Z. Ghobashy, a disbarred attorney:

DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT,

Petitioner,

OMAR Z. GHOBASHY,

Respondent.

NOTICE OF ENTRY M-882

SIR:

PLEASE TAKE NOTICE that the within is a certified copy of an order and decision duly made in this proceeding and duly entered and filed in the office of the Clerk of the Supreme Court of the State of New York, Appellate Division, First Department, on the 27th day of April, 1993.

Dated: New York, New York April 28, 1993

Yours etc.,

HAL R. LIEBERMAN
Attorney for Petitioner
Departmental Disciplinary Committee
41 Madison Avenue
New York, N. Y. 10010
(212) 685-1000

MADY J. EDELSTEIN
Of Counsel

To: Fredric Lewis, Esq.
7 Dey Street
New York, New York 10007
Attorney for Respondent

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, entered on April 27, 1993

Present—Hon. Francis T. Murphy, Presiding Justice
E. Leo Milonas
Ernst H. Rosenberger
Bentley Kassal
Israel Rubin, Justices

In the Matter of Omar Z. Ghobashy, admitted as Omar Zaki Ghobashy, an attorney and counselor-at-law:

Departmental Disciplinary Committee for the First Judicial Department,

Petitioner,

Omar Z. Ghobashy,

Respondent

/stamped/
Filed
Apr 27 1993
Appellate Division, Supreme Court
First Department

M-882

The above-named respondent having moved for an order staying execution and enforcement of the order of this Court entered on January 14, 1993 and for leave to appeal to the Court of Appeals from said order,

Now, upon reading and filing all of the papers in support of the motion and those opposed; and due deliberation having been had thereon, it is unanimously

Ordered that said motion be and the same hereby is denied in all respects.

ENTER:

/s/ Francis X. Galdi
Clerk

APPELLATE DIVISION SUPREME COURT FIRST DEPARTMENT STATE OF NEW YORK

I. FRANCIS X. GALDI, Clerk of the Appellate Division of the Supreme Court, First Judicial Department, do hereby certify that I have compared this copy with the original thereof filed in said office on 4-27-93 and that the same is a correct transcript thereof, and of the whole of said original

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court APRIL 27th, 1993

/s/ Francis X. Galdi
Clerk

APPENDIX D—AFFIDAVITS OF PHYSICIANS

Supreme Court of the State of New York

APPELLATE DIVISION: FIRST DEPARTMENT

In the matter of Omar Z. Ghobashy, an attorney and counsel-at-Law.

Departmental Disciplinary Committee for the First Judicial Department,

Petitioner,

-against-

Omar Z. Ghobashy,

Respondent.

AFFIDAVIT OF PHYSICIAN

STATE OF NEW YORK

ss:

COUNTY OF WESTCHESTER

LEONARD DIRE, M.D. being duly sworn, deposes and says:

That I am a physician duly licensed to practice medicine in the State of New York and I maintain offices in New Rochelle, New York.

That my specialty is cardiology and that I am affiliated with Westchester Medical Center in Valhalla, New York.

Mr. Omar Z. Ghobashy came under my care on June 12, 1992. I directed that he have a cardiac catherization performed. My findings were as follows:

Mr. Ghobashy suffered a myocardial infarction complicated by congestive heart failure. He has a severe ischemic cardiomyopathy.

Mr. Ghobashy's condition precludes any type of operative intervention. His heart must be treated by conservative therapies.

In my opinion, it is necessary for him to restrict his activity. At this time, he must avoid any stress and will be unable to engage in the practice of law for at least five or six months.

I have asked Mr. Ghobashy to avoid all stressful situations, as they would be life threatening in his condition.

/s/ Leonard Dire 7/2/92
LEONARD DIRE, M.D.

Supreme Court of the State of New York

APPELLATE DIVISION—FIRST DEPARTMENT

In the Matter of Omar Z. Ghobashy, an Attorney and Counsel-at-Law.

Departmental Disciplinary Committee for the First Judicial Department,

Petitioner,

Omar Z. Ghobashy,

Respondent.

AFFIDAVIT OF PHYSICIAN

STATE OF NEW YORK

ss:

COUNTY OF WESTCHESTER

MICHAEL EUFEMIO, M.D. being duly sworn, deposes and says:

That I am a physician duly licensed to practice medicine in the State of New York and I maintain offices in New Rochelle, New York.

That I am a Diplomate of the American Board of Internal Medicine with a subspecialty in endocrinology and metabolism.

That I am the Chief of Endocrinology at the New Rochelle Hospital and I am an attending physician at the Mount Vernon Hospital.

That Mr. Omar Z. Ghobashy first came to see me on January 26, 1990. I was advised that Mr. Ghobashy had been a diabetic for ten years and that his internist had been treating him with micronaise which is an oral medication.

At the time he came to see me his diabetes was controlled with a blood sugar reading of 350. I prescribed insulin for Mr. Ghobashy.

Mr. Ghobashy used insulin and despite the use of insulin and monitoring of his blood sugar his diabetes fluctuated and as late as February, 1992 his blood sugars were as high as 601 and it was necessary for me to have him admitted to New Rochelle Hospital in an attempt to regulate his blood sugars.

Blood sugars in the range from 300 to 600 can be a cause for negative psychological responses that, in turn, can further exacerbate the disease. High blood sugar also produces mood changes and feelings of irritability, anxiety, depression and changes in personality and conduct.

In the diabetic person stress can mean a constant roller coaster effect of hormonal changes that inhibit the action of insulin.

Mr. Ghobashy is currently under active treatment to stabilize his diabetic condition.

/s/ Michael Eufemio
MICHAEL EUFEMIO, M.D.

Sworn to before me this day of July, 1992

Notary Public

In my opinion Mr. Ghobashy's high blood sugars may have contributed to his erratic behavior.[handwritten]
/s/ Michael Eufemio

APPENDIX E—ORDER OF EXTENSION OF TIME BY SUPREME COURT OF THE UNITED STATES

Supreme Court of the United States

OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

September 14, 1993
Mr. Omar Zaki Ghobashy
85 Wildwood Road
New Rochelle, NY 10804

Re: Omar Zaki Ghobashy v. Departmental Disciplinary Committee for the First Judicial Department
Application No. A-244

Dear Mr. Ghobashy:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on September 14, 1993, signed an order extending the time to and including November 8, 1993.

A copy of the Justice's order is enclosed.

Very truly yours,
WILLIAM K. SUTER, Clerk
By /s/ Jeffrey D. Atkins
Jeffrey D. Atkins
Assistant Clerk

NOTE - FOR YOUR INFORMATION: A copy of this letter has been sent to all interested parties shown on the attached notification list.

Supreme Court of the United States

No.

A-244

Omar Zaki Ghobashy,

Petitioner

v.

Departmental Disciplinary Committee for the First Judicial Department

---

ORDER

UPON CONSIDERATION of the application of petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including November 8, 1993.

/s/ Clarence Thomas
Associate Justice of the Supreme Court of the United States

Dated this 14th day of September, 1993.

Supreme Court of the United States

OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

NOTIFICATION LIST

Mr. Omar Zaki Ghobashy
85 Wildwood Road
New Rochelle, NY 10804

Ms. Mady Edelstein
First Department of New York
41 Madison Avenue
New York, NY 10010

Francis X. Galdi
Appellate Division, Supreme Court of New York,
First Judicial Department
27 Madison Avenue
New York, NY 10010

APPENDIX F—AMENDMENTS VIII AND XIV(1) TO UNITED STATES CONSTITUTION

AMENDMENT VIII TO THE UNITED STATES CONSTITUTION

Excessive Bail or Fines and Cruel Punishment Prohibited. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV(1) TO THE UNITED STATES CONSTITUTION

Citizenship Rights Not to be Abridged. (1) All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.